which was an outgrowth of what is known as *Ex parte 74 Increased Rates*, 58 I. C. C. 220, are the logical development of *The Illinois Central Case*, 245 U. S. 493, 16 MICH. L. REV. 379. In the last mentioned note it was said that the *Illinois Central Case* is evidently not the last, but the war delayed for some years the issue which now again arises between the states and the federal government. The present case expressly denies that the decision involves giving the federal commission general regulation of intrastate commerce, but does reiterate the view of the *Minnesota Rate Case*, 230 U. S. 352, 399, that the power to regulate interstate commerce "is not to be denied or thwarted by the commingling of interstate and intrastate operations." So far, at least, as concerns rates it would seem there is practically no right left in the state which may not be considered by Congress as affecting interstate commerce, and so subject to federal control. Specifically, the court decides, first, that the order of the commission is much wider than the orders in the *Shreveport* and *Illinois Central* cases, in that it includes all rates and fares in the states. It was a horizontal increase of them all. Such an order "should not be given precedence over a state rate statute, otherwise valid, unless, and except so far as, it conforms to a high standard of certainty," quoting from the *Illinois Central* case. The intrastate fares as a whole were found to be an undue discrimination against interstate commerce, for they so reduced the revenue necessary to yield a fair return to the companies as to require a heavy increase in interstate rates to offset this loss. The lower the intrastate the higher the interstate rates must be. The court therefore upholds the power of the Interstate Commerce Commission to order the increase of intrastate rates, and leaves it to a conference between that commission and the state commission to make necessary adjustments modifying the horizontal increase. The Transportation Act of 1920 so construed marks another long step in the extension of federal and the restriction of state control of agencies of nation-wide activity, and it has already drawn vigorous protest from those who are jealous for local power of control. The decision makes a conspicuous effort to show that there does remain a sphere in intrastate commerce that cannot be entered, or at least completely occupied, by the federal control. It is, however, too restricted to furnish much comfort to state commissions.

LAW OF NATIONS—EFFECT OF WAR ON CONTRACTS.—In June, 1914, the plaintiff, a citizen of the United States residing in Ohio, contracted with his son-in-law, Meyer, a German citizen then residing in Ohio, to support the latter's children during his absence. Meyer and his wife went to Germany. When war broke out Meyer entered the German army and remained abroad until the close of the war. Under Trading with the Enemy Act, October 6, 1917, which made it unlawful to trade with the enemy except under license from the President, "to trade" included "(c) Enter into, carry on, complete or perform any contract, agreement or obligation." Subsequent to this date plaintiff continued to perform the agreement without license from the President. Claim was made against assets of Meyer in the

hands of the Alien Property Custodian. *Held,* that so much of claim as accrued subsequent to the passage of the act cannot be allowed. *Springer* v. *Garvan,* 276 Fed. 595.

An early writer on international law intimated that the declaration of war put an end to all agreements between subjects of enemy states. GROTIUS, DE JURE BELLI ET PACIS, III, ch. 23, ¶ 5. *Dictum* of Kent is to the same effect. *Griswold v. Waddington* (N. Y.), 16 Johns. 438. Judge Story used language equally broad. *The Julia,* 8 Cr. 194. The cases, however, have not supported such opinions. *Kershaw* v. *Kelsey,* 100 Mass. 561 (President's proclamation during Civil War which forbade "commercial intercourse" with the enemy, not violated by a lease of Mississippi lands). But contracts involving commercial intercourse or communication with the enemy are made illegal by the mere operation of the laws of war. *The Hoop,* 1 C. Rob. 196; *The Rapid,* 8 Cr. 155. Contracts of necessity, founded on a state of war, are the only exceptions. *Antoine* v. *Morshead,* 6 Taunton 237; 1 HALLECK'S INT. LAW (Ed. 4), 582, 583. The act in the principal case was broader than the proclamation in *Kershaw* v. *Kelsey, supra,* and the result reached was clearly proper. See also *Williams* v. *Paine,* 169 U. S. 55, and *In re Will of Kielsmark,* 188 Iowa 1378.

NEGLIGENCE—FACT THAT DRIVER OF DEFENDANT'S CAR DID NOT HAVE AN OPERATOR'S LICENSE IS NOT CONCLUSIVE.—Statute required the driver of any vehicle to have an operator's license, under pain of fine, unless driver was sixteen or over and accompanied by a person with such license. The defendant was being driven in his automobile by a fifteen-year-old employee when the car collided with the plaintiff's intestate and killed him. Verdict for the defendant. The plaintiff excepted, claiming that an automobile operated on the highway by an unlicensed driver is a trespasser and a nuisance and that the owner is liable for injuries caused by it, irrespective of the absence of negligence in its operation or the presence of contributory negligence. The exception was overruled on the ground that the breach of the statute was material only to the extent that it as a fact was the proximate cause of the injury. *Black* v. *Hunt* (Conn., 1921), 115 Atl. 429.

In giving its decision the court says: "In doing an unlawful act a person does not necessarily put himself out of the protection of the law. He is not barred of redress for an injury suffered by himself nor liable for an injury suffered by another merely because he is a lawbreaker." The court distinguishes the Massachusetts cases cited in support of the rule contended for from the instant case. In Massachusetts itself, perhaps because of the strong criticism by the other courts, the rule advocated by the plaintiff has been restricted in its application to cases involving the operation of unlicensed vehicles and has not been followed in unlicensed operator decisions. *Bourne* v. *Whitman,* 209 Mass. 155; *Polmatier* v. *Newbury,* 231 Mass. 307. So it is generally held, in the absence of express statutory language to the contrary, that the failure to have an operator's license is not conclusive of negligence.